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prices fixed by a contract for different classes of work, or whether he had waived or abandoned his right to recover the higher price, were questions of fact which were properly left to the determination of the jury, under instructions which correctly propounded the law and gave them great latitude in the range of their inquiry. *American Manganese Company v. Virginia Manganese Company*, distinguished.

8. CASE AT BAR—*Modification of contract—change in method of work—engineer's monthly estimates—receipts in full—releases.* Under the evidence certified, considered as upon a demurrer to the evidence by the plaintiff in error, the defendant in error was entitled to recover the higher price fixed by the contract for the work performed by him, and there has been no such modification of the terms of the contract or change in the mode of doing the work, acquiesced in by the defendant in error, as would deprive him of the higher price called for by the contract, nor is he debarred from such recovery by accepting and receipting for the monthly estimates of the engineer at the lower figure. Nor was the defendant in error debarred from instituting this action by reason of failure to tender the releases required by the contract.

Buchanan, J., dissenting: The decision of the chief engineer was final and conclusive on all parties, unless he was guilty of fraud or of a mistake so gross as to amount to fraud. This question was properly submitted to the jury. But even if guilty of such mistake, still the conduct of the plaintiff, although he was not satisfied with the determination of the engineer, was such as to preclude him from recovery in this action. The jury were also erroneously instructed on the subject of fraud and mistake on the part of the engineer.

HUGHES' ADM'R AND OTHERS V. PATTERSON'S EX'OR.—Decided at Wytheville, July 11, 1895.—*Buchanan, J.*:

1. SATISFACTION—*Collateral agreement partly performed—compensation.* Where a debtor has agreed to do a collateral thing in satisfaction of his bond to his creditor, and dies after having partially performed the agreement, the bond should not be treated as paid, but the debtor should have credit thereon for the money paid, or the value of the services rendered in pursuance of the agreement.